



July 6, 2018

Via email to: hq.foia@epa.gov

Attn: Region 5 FOIA Office

Re: FOIA Request for Records concerning General Iron Industries, Inc. emissions testing report pursuant to Section 114(a) of the Clean Air Act

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (“NRDC”) to request disclosure of records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and applicable Environmental Protection Agency (“EPA” or “Agency”) regulations at 40 C.F.R. § 2.100-2.406.

I. Requested Records and Disclosure Method

Please produce all records¹ produced or submitted by General Iron Industries, Inc., 1909 North Clifton Avenue, Chicago, Illinois 60614, (“General Iron”) in response to EPA Region 5’s request to provide information under Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a), dated November 15, 2017 (“§ 114(a) Request”).² Such records include, but are not limited to the following:

1. All records of emissions testing and data prepared or submitted in response to EPA’s § 114(a) Request, including but not limited to:
 - a. General Iron’s proposed testing protocol;
 - b. Notification of intent to perform emissions testing;
 - c. Complete report of emissions testing;
 - d. Any supplemental reference materials included in the report;
 - e. All other records prepared or submitted in response to Appendix B of the § 114(a) Request;
2. All permit and operations records prepared or submitted in response to EPA’s § 114(a) Request, including but not limited to:

¹ “Records” means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, internal messaging systems, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). NRDC seeks responsive records in the custody of any EPA office, including, but not limited to, EPA Headquarters offices.

² Provided as Ex. A to this letter.

- a. All construction permits, operating permits and permit applications submitted, received or in use since July 1, 2010;
 - b. Copies of the Operating program maintained pursuant to 35 Ill. Adm. Code 212.309, and all revisions, used at the facility since July 1, 2012;
 - c. Copies of all annual emissions reports submitted to the Illinois Environmental Protection Agency from January 1, 2012 to the present;
 - d. Monthly records of shredder throughput since July 1, 2012;
 - e. Shredder operating hours per day for each day from July 1, 2012 to the present;
 - f. Facility documents discussing volatile organic compound (“VOC”) emissions from the shredder since July 1, 2010;
 - g. All other records prepared or submitted in response to Appendix C of the § 114(a) Request;
3. All records pertaining to Administrative Consent Order EPA-5-12-113(a)-IL-04 (“Order”), dated June 28, 2012, including but not limited to:
 - a. All records relating to the Operation and Maintenance Plan;
 - b. All Calendar Quarterly Reports submitted to EPA, including all reports and photos from observations, exceedance of emission limits, permit activity, and records of all emission complaints received;
 - c. Any claims of business confidentiality under 40 C.F.R. Part 2, Subpart B asserted by General Iron;
 - d. All other records or reports prepared by General Iron as required by the Order.

Please either email responsive records to me at mgeertsma@nrdc.org, or email me to request a link to a Dropbox folder where you can upload the records. Please release responsive records to me on a rolling basis, prioritizing records falling into category 1 above regarding emissions testing and data. If you determine that any of the records I’ve described above are already publicly available, please let me know where to find them.

II. Request for a Fee Waiver (or Reduction)

NRDC requests that EPA waive any fee it would otherwise charge for searching for and producing the requested records. FOIA dictates that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). As I explain below, NRDC’s requested disclosure meets both requirements. NRDC is also “a representative of the news media” entitled to fee reduction. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

Please disclose the records requested above regardless of your decision on whether to waive or reduce fees. To expedite disclosure, NRDC will, if necessary and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). Please contact me before doing anything that would cause the fee to exceed \$250.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here is “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

1. Subject of the request

The records requested here pertain to EPA’s authority to request information under Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a) to determine whether an emission source is complying with the relevant State Implementation Plan. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

2. Informative value of the records to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities, 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the government’s role in addressing public health, environmental, or other concerns related to the operations at General Iron’s Chicago, Illinois facility. There is more than a reasonable likelihood that these records have informative value to the public because residents of the community in which the facility is located have long been concerned about the potential health impacts of activities at the General Iron facility, and the public at large has an interest in understanding the impacts of this and similar operations on air, soil, and water quality. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

3. Likely contribution to public understanding

Because NRDC is a “representative of the news media,” as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii). Even if NRDC were not a media requester, its expertise in public health issues related to air, soil and water contamination from industrial sources, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—show that NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is accordingly a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC’s more than three million members and online activists are “a broad audience of persons interested in the subject” of emissions testing at the General Iron facility, 40 C.F.R. § 2.107(l)(2)(iii). When this group is combined with the other audiences for the numerous publications and other platforms to which NRDC contributes, the likely audience of interested persons to be reached is certainly “reasonably broad.” 40 C.F.R. § 2.107(l)(2)(iii).

NRDC can disseminate newsworthy information collected through this FOIA request to its members, online activists and other members of the public through many channels, free of charge. As of summer 2017, these channels include:

- NRDC's website, <http://www.nrdc.org> (sample homepage at Att. 1), is updated daily, features blogs by NRDC's scientific, legal, and other staff experts, and draws approximately 1.3 million page views and 510,000 unique visitors per month.
- NRDC's Activist email list includes more than three million members and online activists who receive regular communications on urgent environmental issues. (sample at Att. 7) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 8).
- NRDC updates and maintains several social media accounts with tens to hundreds of thousands of followers. Its major accounts include Facebook (906,992 followers) (Att. 2), Twitter (271,551 followers) (Att. 3), Instagram (108,315 followers) (Att. 4), YouTube (Att. 5), and LinkedIn (Att. 6).
- NRDC also is a regular contributor to Medium (1,478 followers) (Att. 9) and the Huffington Post (Att. 10).

NRDC staff also write papers and reports; provide legislative testimony; present at conferences; direct and produce documentary films; and contribute to national radio, television, newspaper, magazine and web stories and academic journals. Some examples of these contributions include:

- Article, "Interior Department worked behind the scenes with energy industry to reverse royalties rule," *Wash. Post*, Oct. 6, 2017 (discussing documents obtained through a FOIA request submitted by NRDC and quoting NRDC Senior Policy Advocate Theo Spencer) (Att. 12);
- Documentary, *Sonic Sea* (2016), featured on the Discovery Channel (directed and produced by NRDC Deputy Director of Communications Daniel Hinerfeld) (Att. 13);
- Research article, "The requirement to rebuild US fish stocks: Is it working?" *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 14);
- Issue brief, "The Untapped Potential of California's Water Supply: Efficiency, Reuse, and Stormwater," June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 15); *see also* "Saving Water in California," *N.Y. Times*, July 9, 2014 (discussing the report's estimates) (Att. 16);
- Congressional testimony, David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Conference brochure, "World Business Summit on Climate Change," May 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 18);

NRDC's legal, scientific, and other experts have a history of using information obtained through FOIA requests to inform the public about a variety of issues, including energy policy,

climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. For example:

1. NRDC recently obtained through FOIA and publicized emails between the Trump transition team and industry officials regarding reversal of Obama-era preliminary restrictions on the proposed Pebble Mine. This cast light on an issue of considerable public interest. *See, e.g.,* Kevin Bogardus and Dylan Brown, “Homework assignment’ — how Pebble lobbied Trump’s EPA,” *E&E News*, June 8, 2017 (Att. 30).
2. In April 2014, NRDC used FOIA documents to prepare a report on potentially unsafe chemicals added to food, without FDA oversight or public notification. The report, *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 28). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing report) (Att. 29).
3. NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. NRDC used these documents to publish a January 2014 report, titled *Playing Chicken with Antibiotics*, that reveals decades of FDA hesitancy to ensure the safety of these drug additives (Att. 26). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing report) (Att. 27).
4. NRDC has used White House documents obtained through FOIA and other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att.24). *See also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Magazine*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 25).
5. NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 23).
6. Through FOIA, NRDC obtained an ExxonMobil memorandum advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House

Move to Oust Top Scientist from International Global Warming Panel,” Apr. 3, 2002 (Att. 21). *See also* Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 22).

7. Through FOIA and other sources, NRDC obtained information on levels of arsenic in drinking water nationwide and used it in a report, *Arsenic and Old Laws* (2000) (Att. 19). The report explained how interested members of the public could learn more about arsenic in their own drinking water supplies. *Id.* *See also* Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC’s report) (Att. 20).

In short, NRDC has proven its ability to digest, synthesize, and quickly disseminate to a broad audience newsworthy information gleaned through FOIA requests like this one.

4. Significance of the contribution to public understanding

The records requested here shed light on a matter of considerable public interest and concern: Operations at metal shredding facilities emit particulate matter consisting of harmful metals, as well as volatile organic compounds, and communities across the country are concerned about the type and extent of exposure that they endure on a daily basis. In Houston, after five years of community complaints of smoke, explosions, fire, and respiratory concerns, the city’s Bureau of Pollution Control and Prevention commenced testing outside five Houston metal recycling operations.³ The subsequent testing found dangerous levels of hexavalent chromium and PM₁₀ values that frequently and grossly surpassed PM₁₀ 24-hour standard in some of Houston’s most densely populated areas.⁴ In California, after the Department of Toxic Substances Control published a report on issues related to metal shredder activities, the state legislature passed a bill to more thoroughly evaluate and regulate metal shredding facilities to ensure adequate protection of human health and the environment.⁵ One Minnesota-based auto shredding facility recently reached a settlement with the state’s pollution control agency to pay \$.25 million and relocate its operations by 2019, after a long history of community concern and known violations of air quality standards since 2014.⁶ The Minnesota Pollution Control Agency now monitors and posts monthly data for air quality at six industrial locations in Northern Minneapolis.⁷

Residents of Chicago’s Lincoln Park community have consistently expressed health and environmental concerns regarding the operations at the General Iron facility. In 2010, the EPA

³ *See* Ingrid Lobet, “Danger in air near metal recyclers,” *Houston Chronicle*, December 29, 2012, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Danger-in-air-near-metal-recyclers-4154951.php>.

⁴ *See* Arturo J. Blanco, Loren Raun, Don Richner, “What is actually emitted from Area Sources: Results of a Special Study of Metal Recyclers,” *Houston Department of Health and Human Services*, 2012, available at <https://www3.epa.gov/ttnamti1/files/2012conference/3BRAun.pdf>.

⁵ *See Metal Shredding Facilities and Wastes (Implementation of SB 1249)*, California Department of Toxic Substances Control, <https://www.dtsc.ca.gov/HazardousWaste/MetalShredderPortal.cfm> (last visited June 28, 2018).

⁶ *See* Dan Sandoval, “Northern Metal Recycling to relocate shredder,” *Recycling Today*, May 2, 2018, <http://www.recyclingtoday.com/article/northern-metal-recycling-scrap-auto-shredder-becker-minnesota/>.

⁷ *See North Minneapolis Air Monitoring Project*, Minnesota Pollution Control Agency, <https://www.pca.state.mn.us/air/north-minneapolis-air-monitoring-project> (last visited June 28, 2018).

received smoke and odor complaints regarding General Iron, began surveillance of the facility, and soon discovered fugitive particulate matter from the shredder crossing beyond the property line of the facility.⁸ After issuing a Notice of Violation, the subsequent Administrative Consent Order between General Iron and the EPA mandated additional testing, reporting, and installation of pollution control technology at the facility.⁹ However, concerns within the community did not dissipate – as of June 25, 2018, one Change.org petition has gained 1,862 signatures and dozens of comments from residents that believe General Iron should leave Lincoln Park.¹⁰ In August 2017, Alderman Brian Hopkins presented the findings of a study that measured PM_{2.5} emissions data at three neighborhood locations surrounding the facility, urging the Department of Public Health to immediately implement an air monitoring program and restrict the facility’s operating hours.¹¹ Public understanding of emissions relating to industrial metal shredding activities would be significantly enhanced by disclosure of the requested records concerning emissions testing at the General Iron facility. Disclosure would help the public to more effectively evaluate the potential harm of General Iron’s operations and others like it on the communities in which they are located, and to better understand and evaluate EPA’s actions in utilizing Section 114(a) of the Clean Air Act to mandate the completion of an emissions testing report at the facility.

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure of the requested records would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization; it uses information obtained under FOIA for its own public-information and advocacy purposes, and does not resell this information. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public emissions testing and reports prepared by General Iron in response to EPA’s § 114(a) Request. As noted at Part II.A, any records submitted by General Iron in response to EPA’s § 114(a) Request relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of General Iron’s Chicago facility operations and associated threats to human health and the environment.

C. NRDC Is a Media Requester

Even if NRDC were not entitled to a public interest waiver of all costs and fees, it would be a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C.

⁸ See General Iron Industries, Inc., Administrative Consent Order No. EPA-5-12-113(a)-IL-04 (June 29, 2012), ¶ 21 (Ex.B).

⁹ *Id.* at ¶ 26–36.

¹⁰ See Change.org, *General Iron—Belong in Lincoln Park? Signing This Petition is a “NO” Vote*, <https://www.change.org/p/residents-of-lincoln-park-general-iron-does-it-belong-in-lincoln-park> (last visited June 28, 2018).

¹¹ See Letter from Brian Hopkins, Chicago Alderman, to Dr. Julie Morita, Commissioner of Chicago Department of Public Health (August 21, 2017) available at <https://assets.documentcloud.org/documents/4329883/Hopkins-8-21-17-Letter-to-CDPH.pdf>.

§ 552(a)(4)(A)(ii), and EPA’s FOIA regulations 40 C.F.R. § 2.107(c)(1)(iii); *see also* 40 C.F.R. § 2.107(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 11) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. For example, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. As explained in Part II.A, NRDC also publishes a regular newsletter for its more than three million members and online activists. *See* 40 C.F.R. § 2.107(b)(6) (“Examples of news media include . . . publishers of periodicals.”). NRDC also maintains a significant additional communications presence through its staff blogs on www.nrdc.org, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). These and the other communications channels referenced earlier in this letter routinely include information about current events of interest to the readership and the public. NRDC employs more than fifty specialized communications staff, including accomplished journalists and editors, and numerous other advocates able to disseminate, through these and other channels, newsworthy information acquired through FOIA.

Organizations with NRDC’s characteristics “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); *see also Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”).

III. Conclusion

Thank you for your help. Please call or email me with questions.

Sincerely,

/s/ Meleah A Geertsma

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Enclosures (provided via Dropbox link,

https://www.dropbox.com/sh/mrlvpfv85y75cck/AAB_dG17pVaOzMEIXJuRS8Gca?dl=0):

Attachments 1 through 30, in support of fee waiver and reduction requests (single .pdf file)

Exhibits A and B (single .pdf file)